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10/811,338

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Adam Iredell Hayden

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MAGINOT, MOORE & BECK, LLP

CHASE TOWER

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EXAMINER

BARRETT, THOMAS C

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ADAM IREDELL HAYDEN

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Appeal 2009-004467  
Application 10/811,338  
Technology Center 3700

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Decided: February 4, 2010

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Before: LINDA E. HORNER, JOHN C. KERINS, and KEN B. BARRETT,  
*Administrative Patent Judges.*

HORNER, *Administrative Patent Judge.*

DECISION ON APPEAL  
STATEMENT OF THE CASE

Adam Iredell Hayden (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 30-49. Claims 1-29 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We REVERSE.

### THE INVENTION

Appellant's claimed invention relates to orthopaedic surgical procedures requiring accurate shaping of the bone or placement of bone engaging elements. Spec. 1:2-5. Claim 30 reproduced below, is representative of the subject matter on appeal.

30. A system for accurately guiding placement of a bone engaging element in a bone comprising:

- a guide configured to guide movement of the bone engaging element toward a location on a bone, said guide having a bore through which said bone engaging element may be advanced, and said bore defining a first longitudinal axis; and

- a support apparatus configured to support said guide, said support apparatus including;

- a support body mountable to the bone;

- an arm extending from said support body; and

- a position adjustment assembly supported on said arm, said position adjustment assembly including (i) a first gross adjustment mechanism configured to permit gross adjustment of said guide in relation to said support body along a second longitudinal axis, (ii) a first fine adjustment mechanism configured to permit fine adjustment of said guide in relation to said support body along said second longitudinal axis, (iii) a second gross adjustment mechanism configured to permit gross adjustment of said guide in relation to said support body along a third longitudinal axis, (iv) a second fine adjustment mechanism configured to permit fine adjustment of said guide in relation to said support body along said third longitudinal axis, and (v) a third adjustment mechanism configured to permit adjustment

of said guide in relation to said support body along said first longitudinal axis,

wherein said first longitudinal axis is not coincident with said second longitudinal axis,

wherein said first longitudinal axis is not coincident with said third longitudinal axis, and

wherein said second longitudinal axis is not coincident with said third longitudinal axis.

### THE REJECTION

Appellant seeks review of the Examiner's rejection of claims 30-49 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 5,228,459 to Caspari, issued July 20, 1993.

### ISSUE

The Examiner's determination of anticipation by Caspari is based in part on the finding that Caspari discloses a guide (chamber 140) having a bore (port 142) defining a first longitudinal axis, and a third adjustment mechanism (sliding motion of rod 46 within tube 48). Ans. 3 (parenthetical nomenclature to Caspari).

Appellant contends that Caspari does not anticipate independent claims 30, 37, and 45 because each claim requires the third adjustment mechanism to adjust the guide along the first longitudinal axis, while in Caspari's apparatus, adjustment of rod 46 along the axis of tube 48 does not move port 142 along that same axis. App. Br. 12-14.

The issue before us is:

Did the Examiner err in finding that Caspari discloses the third adjustment mechanism configured to permit adjustment of a guide in

relation to a body along the first longitudinal axis, as called for in claims 30, 37, and 45?

### FINDINGS OF FACT

We find that the following enumerated facts are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Caspari discloses a method and apparatus for arthroscopic knee replacement comprising: a tibial jig 40, cutter platform 84 having a linear slide member 100, and a cutter module 126. Caspari, col. 1, ll. 12-13; col. 4, ll. 24-25, 61-66; col. 5, ll. 21-22; fig. 1.
2. Tibial jig 40 includes a lower V-block 42 that rests against the leg above the ankle, and an upper V-block 44 adapted to be secured to the tibia below the knee. Caspari, col. 4, ll. 24-28; fig. 1. Lower V-block 42 is connected to a rod 46 that is telescopingly received within a tube 48 connected to upper V-block 44. Caspari, col. 4, ll. 28-30; fig. 1.
3. Cutter platform 84 and linear slide member 100 attach to the top of tibial jig 40 so that slide member 100 is generally perpendicular to and above tibial jig 40. Caspari, figs. 2, 3. Cutter platform 84 and linear slide member 100 are raised and lowered with respect to tibial jig 40 by rotation of thumbwheel 78. Caspari, col. 4, ll. 43-53; figs. 2, 3. Slide member 100 has an elongated dovetail 121 on the top surface for connection to cutter module 126. Caspari, col. 5, ll. 20-22; fig. 2.

4. Cutter module 126 is mounted to the top of slide member 100 by a slot 122 in a housing 124 that receives dovetail 121 of slide member 100. Caspari, col. 5, ll. 20-22; fig. 2. Cutter module 126 includes a port 142 in the housing 124 extending directly up from cutter module 126. Caspari, col. 5, ll. 20-22, 31-33; figs. 2, 3, 7, 8.

### ANALYSIS

Independent claims 30, 37, and 45 each call for a third adjustment mechanism configured to permit adjustment of the guide in relation to the body along the first longitudinal axis.

Caspari discloses a method and apparatus for arthroscopic knee replacement (Fact 1). Caspari's apparatus includes a cutter module 126 mounted atop linear slide member 100 of cutter platform 84, which is attached above a tibial jig 40 (Fact 1). When positioned for use in a medical procedure, the upper V-block 44 of tibial jig 40 attaches to the patient's tibia, and the lower V-block 42 rests on the patient's leg above the ankle (Fact 2). Lower V-block 42 is connected to a rod 46 that is telescopingly received within tube 48 that is connected to upper V-block 44 (Fact 2). The cutter module 126 includes a port 142 (Facts 3).

We disagree with the Examiner's finding that Caspari's rod 46 and tube 48 are the claimed third adjustment mechanism. See Ans. 4. Because tibial jig 40 is attached to the patient's tibia at upper V-block 44 when positioned for a medical procedure, movement of rod 46 within tube 48 does not move tube 48, and consequently does not move port 142 (Fact 2). Because movement of rod 46 does not move port 142 at all, then movement of rod 46 also does not adjust port 142 along a first longitudinal axis. Thus, the sliding motion of rod 46 within tube 48 is not the third adjustment

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mechanism of claims 30, 37, and 45 because it is not configured to permit adjustment of the guide along the first longitudinal axis as claimed.

Because Caspari does not disclose each element of claims 30, 37, and 45, Caspari does not anticipate claims 30, 37, and 45. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). Claims 31-36, 38-44, and 46-49 also are not anticipated by Caspari by virtue of their dependence, directly or indirectly, from claims 30, 37, and 45.

### CONCLUSION

The Examiner erred in finding that Caspari discloses the third adjustment mechanism configured to permit adjustment of a guide in relation to a body along the first longitudinal axis, as called for in claims 30, 37, and 45.

### DECISION

We REVERSE the decision of the Examiner to reject claims 30-49.

### REVERSED

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